JD(SF)-19-04
Morris, OK

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

PRO-TEK FIRE SUPPRESSION, INC.

and **Case 17-CA-22013**

ROAD SPRINKLER FITTERS LOCAL UNION NO. 669, U.A., AFL-CIO

Frank Arnold Molenda, Esq., Tulsa, OK, for the General Counsel.
Bryan Drinnon, President, Okmulgee, OK, for the Respondent.
William W. Osborne, Jr., Esq., Washington, D.C., for the Charging Party.

DECISION

Statement of the Case

Gregory Z. Meyerson, Administrative Law Judge. Pursuant to notice, I heard this case in Okmulgee, Oklahoma, on February 18, 2004. Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO (the Union or the Charging Party), filed an unfair labor practice charge in this case on December 19, 2002. Based on that charge, the Regional Director for Region 17 of the National Labor Relations Board (the Board) issued a complaint on February 26, 2003. The complaint alleges that Pro-Tek Fire Suppression, Inc. (the Respondent or the Employer) violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying the commission of the alleged unfair labor practices. Thereafter, in disposition of the unfair labor practices alleged in the complaint, the Respondent entered into a unilateral informal settlement agreement, which was approved by the Regional Director on June 27, 2003. However, on December 8, 2003, the Regional Director, having determined that the Respondent had failed to comply with said settlement agreement, issued an order revoking, vacating, and setting aside the settlement agreement, and reissuing the complaint.

All parties appeared at the hearing, and I provided them with the full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue orally and file briefs.[1] Based on the record evidence and my observation of the demeanor of the witnesses, I now make the following findings of fact and conclusions of law.[2]

Findings of Fact

I. Jurisdiction

The complaint alleges, the answer admits, and I find that the Respondent is a corporation with a place of business in Morris, Oklahoma (herein called the facility), where it has been engaged in the installation and servicing of sprinkler and fire protection systems. Further, I find that during the 12-month period ending January 31, 2003, the Respondent, in the course and conduct of its business operations, provided services valued in excess of $50,000 to the United States Government.

Accordingly, I conclude that the Respondent is now, and at all times material herein has been, and employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. Labor Organization

The General Counsel alleges, the Respondent admits, and I find that at all times material herein, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. Alleged Unfair Labor Practices

A. The Dispute

The complaint alleges that since October 11, 2000, the Union has been the collective-bargaining representative of a unit comprised of the Respondent's journeymen sprinkler fitters and apprentices. The Respondent has recognized the Union as the collective-bargaining representative for its employees in the unit, and this recognition has been embodied in an agreement dated October 11, 2000, and in a collective-bargaining agreement, which is effective

[1] In connection with the filing of the charge, and the issuance and reissuance of the complaint, the Regional Director provided notice to the Respondent informing it of the right to representation by counsel. (G.C. Exhs. 1(b), (c), and (k).) Initially, the Respondent was represented by counsel, who filed the Respondent's answer to the complaint. The Respondent's owner and president, Bryan Drinnon (Drinnon), was also informed by the undersigned during a pretrial telephone conference and on day of the hearing of his right to be represented by counsel. However, Drinnon elected to proceed with the hearing without representation by counsel.

[2] At the hearing, counsel for the General Counsel took the position that the Respondent's answer to the complaint, originally issued in this case, was sufficient to also constitute the Respondent's pleading to the reissued complaint, which the Respondent had not specifically answered. The identical substantive allegations are raised in both complaints. As Drinnon indicated that he had no objection to the General Counsel's position, and as the Respondent is not thereby prejudiced, I conclude that the answer originally filed by the Respondent continues to be the Respondent's pleading in this case.

from October 11, 2000 to March 31, 2005. Further, the complaint alleges that since November 21, 2002, the Union, by letter, has requested that the Respondent furnish the Union with certain information necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees. It is alleged that since December 6, 2002, the Respondent has failed and refused to furnish the Union with the requested information.

In its answer to the complaint, the Respondent admits that the request for information was made, but denies that the information requested is necessary for, and relevant to, the Union's duties as the collective-bargaining representative of the unit employees. Further, the Respondent's answer denies that the Respondent has failed and refused to furnish the requested information, and denies the commission of any unfair labor practices.

B. Facts and Analysis

As noted earlier, the Respondent was represented at the hearing by its president and owner, Bryan Drinnon. However, Drinnon offered no evidence in opposition to that presented by counsel for the General Counsel. Therefore, the evidence submitted by the General Counsel, and set forth below, is unrebutted. My decision in this case is based on that uncontested evidence.

On October 11, 2000, the Respondent, through Drinnon, executed an agreement by which it expressly recognized that the Union represented "a clear majority of the sprinkler fitters in its employ" for purposes of collective-bargaining. (G.C. Exh. 3.)[3] Further, on October 11, 2000, the Respondent and the Union executed an agreement by which the Respondent agreed to be bound by the terms and conditions of the master agreement between the National Fire Sprinkler Association, Inc. and Road Sprinkler Fitters and Apprentices Local Union 669, dated and effective April 1, 2000, and all addendums and supplements thereto. (G.C. Exh. 4.) That master agreement is effective by its terms from April 1, 2000 to March 31, 2005. (G.C. Exh. 2.)

By letter dated November 21, 2002, the Union requested that the Respondent furnish it with certain information. That information was "regarding individuals and jobs worked by [the Respondent] from November 1, 2002 to the present." Specifically, the Union requested: "(1) a listing of all individuals performing bargaining unit work employed by [the Respondent], including their full name, address, social security number, job classification, hours worked, rate of pay, date of hire, date of termination (if applicable), amount of benefits paid, and travel expenses or subsistence received (if any)." Further, the Union requested: "(2)…a listing of all jobs, including job name and specific job location, and indicate whether active, completed or under contract." (G.C. Exh. 5.)

Steve Montgomery, union business agent, is responsible for administering the master agreement with signatory contractors located in the States of Oklahoma and Kansas. He testified that in this capacity he is familiar with the Respondent, which is a party to that contract.

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[3] The complaint alleges, the answer admits, and I find that the Respondent's employees represented by the Union, as follows, constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act: All journeymen sprinkler fitters and apprentices employed by the Employer, but excluding guards and supervisors as defined in the Act, and all other employees. Further, I find that at all times since October 11, 2000, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the employees in the unit.

According to Montgomery, the November 21, 2002 request for information was made to the Respondent in order to ensure that the Respondent was in full compliance with the terms and conditions of the master agreement. Drinnon testified that he received the information request from the Union. He indicated that initially, the Respondent did not furnish the Union with the requested information.

As noted earlier, the Respondent subsequently entered in a unilateral informal settlement agreement in an effort to resolve the unfair labor practice allegations set forth in the original complaint. (G.C. Exhs. 1(I) and (K).) Pursuant to the terms of that settlement agreement, the Respondent made an effort to furnish the Union with some of the requested information. However, Drinnon admitted at the hearing that the Respondent had failed to furnish the Union with all of the information requested in the letter of November 21, 2002.[4] According to Drinnon, the Respondent still intends to supply the Union with the remainder of the requested information.[5]

It is axiomatic that upon request by a union for information, an employer has a duty to provide that information, assuming the union needs the information to fulfill its obligation to represent the unit employees and to bargain on their behalf. An employer has a statutory duty to furnish requested information in its possession that is relevant, or even potentially relevant, to a union in fulfilling its responsibilities as the employees' exclusive bargaining representative. *NLRB v. Acme Industrial Co.,* 385 U.S. 432 (1967). Information concerning terms and conditions of employment is presumably relevant and must be provided within a reasonable time, or, if not provided, a timely explanation must be given. *FMC Corp.,* 290 NLRB 483, 489 (1988). In the case at hand, as of the date of the hearing, the Respondent had still not furnished the Union with all the information requested on November 21, 2002, fifteen months earlier. Further, the Respondent has not given any reasonable explanation for its failure to furnish all the information in a timely manner.

It is clear from a review of the November 21, 2002 information request that the Union is requesting information concerning individuals arguably performing bargaining unit work, and their terms and conditions of employment. This information is necessary in order for the Union to determine whether the Respondent is in compliance with the contract. The Board uses a broad, "discovery-type standard" in determining relevance in information requests. Further, the Board has repeatedly held that where the individuals employed are within the bargaining unit a union represents, the requested information is "presumptively relevant" to the union's proper performance of its collective-bargaining duties. "The basis for the presumption is this information is at the core of the employee-employer relationship." Also, the employer has a statutory obligation to provide requested information that is "potentially relevant" and will be of use to a union in fulfilling its responsibilities as the employees' exclusive bargaining representative, including its responsibilities regarding processing grievances. *Lexus of*

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[4] It should be noted that in an effort to secure compliance with the initial settlement agreement in this case, the Region sent the Respondent a letter dated October 15, 2003, in which a Regional Compliance Officer set forth in detail which requested items the Respondent had furnished to the Union, and which items the Respondent had still failed to furnish. (G.C. Exh. 6.)

[5] At the hearing, Drinnon indicated that it was his position that the intention to furnish all of the requested information did not constitute any admission that the Respondent had violated any of the provisions of the master agreement to which the Respondent was bound.

Concord, 330 NLRB 1409 (2000), internal citations omitted. Also in accord, *Green Bay Area Visitors & Convention Bureau,* 327 NLRB No. 150 (1999); *Trustees of Masonic Hall,* 261 NLRB 436 (1982); and *Mobay Chemical Corp.,* 233 NLRB 109 (1977).

As the requested information in the matter before me is "presumptively relevant," the Union is not required to show the "precise relevance" of said information, unless the Respondent submits evidence to rebut the presumption. However, the Respondent offered absolutely no evidence to rebut the relevance of the information sought by the Union. See *Mobay,* at 110.

Accordingly, I conclude that all the information requested by the Union in its letter of November 21, 2002, with the exception of employee social security numbers, is presumptively relevant, and must be furnished by the Respondent in a timely manner. However, the social security numbers need not be provided. In a similar case, the Board has held that "… one of the items requested by the Union----employee social security numbers---is not presumptively relevant and thus need not be furnished absent a showing of the numbers' potential or probable relevance. Such information does not have a sufficient direct relationship on its face either to employees' terms and conditions of employment or to the administration and enforcement of the parties' collective-bargaining agreement. However, this does not excuse the Respondent's failure to supply any of the other information requested by the Union---all of which is clearly presumptively relevant." *Sea-Jet Trucking Corp.,* 304 NLRG 67 (1991). Also see *Green Bay Area Visitor & Convention Bureau, supra.*

The Respondent has failed and refused for at least fifteen months to furnish the Union with information requested by the Union, which information is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.[6] By this conduct, the Respondent has been interfering with, restraining and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, and has been failing and refusing to bargain collectively with the Union. Accordingly, I find that the Respondent has violated Section 8(a)(5) and (1) of the Act.

Conclusions of Law

1. The Respondent, Pro-Tek Fire Suppression, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union is the exclusive representative for the purposes of collective-bargaining of the employees in the following appropriate unit within the meaning of Section 9(a) of the Act: All journeymen sprinkler fitters and apprentices employed by the Employer, but excluding guards and supervisors as defined in the Act, and all other employees.

[6] While the complaint alleges that the Respondent's failure and refusal to furnish the requested information to the Union commenced on December 6, 2002, counsel for the General Counsel offered no evidence to support that specific date. In any event, the violation of the Act is the same, whether the Respondent's unlawful conduct began on that date, or the earlier date of November 21, 2002, which I have adopted as more accurate.

4. By failing and refusing since November 21, 2002 to furnish the Union with requested information relevant to the Union's proper performance of its collective-bargaining duties as the exclusive bargaining representative of an appropriate unit of the Respondent's employees, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

5. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and take certain affirmative action designed to effectuate the policies of the Act.

As the Respondent has failed and refused to furnish the Union with requested information relevant to the Union's proper performance of its collective-bargaining duties as the exclusive bargaining representative of an appropriate unit of the Respondent's employees, which information the Respondent was obligated to furnish, I shall recommend that the Respondent be ordered to furnish the Union with the information requested in the letter of November 21, 2002, with the exception of employee social security numbers. Further, I shall recommend that the Respondent be required to post a notice that assures its employees that it will respect their rights under the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The Respondent, Pro-Tek Fire Suppression, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Failing and refusing to furnish the Union with information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees; and

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the polices of the Act:

(a) Furnish the Union with the information that it requested on November 21, 2002, with the exception of employee social security numbers;

[7] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Within 14 days after service by the Region, post at its facility in Morris, Oklahoma, copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 21, 2002; and

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated at San Francisco, California on March 18, 2004.

Gregory Z. Meyerson
Administrative Law Judge

[8] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

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APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT do anything that interferes with these rights. Specifically:

WE WILL NOT fail and refuse to furnish Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO (the Union) with information that is relevant and necessary to its role as your exclusive collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Federal labor law.

WE WILL furnish the Union with the information that it requested on November 21, 2002, with the exception of employee social security numbers.

Pro-Tek Fire Suppression, Inc.
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

8600 Farley Street, Suite 100, Overland Park, KS 66212-4677

(913) 967-3000, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (913) 967-3005.